

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICK LOWRY, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

ADDITECH, INC., a Texas corporation,

Defendant.

CASE NO. C19-0241-JCC

ORDER

Pursuant to the parties' stipulation and proposed order (Dkt. No. 16), the Court hereby
ENTERS the following protective order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or
private information for which special protection may be warranted. Accordingly, the parties
hereby stipulate to and petition the Court to enter the following stipulated protective order. The
parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not
confer blanket protection on all disclosures or responses to discovery, the protection it affords
from public disclosure and use extends only to the limited information or items that are entitled
to confidential treatment under the applicable legal principles, and it does not presumptively
entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: (1) personally identifying information; (2) private customer
4 information; (3) trade secrets; and (4) confidential financial information.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as
7 defined above), but also: (1) any information copied or extracted from confidential material; (2)
8 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
9 conversations, or presentations by parties or their counsel that might reveal confidential material.

10 However, the protections conferred by this agreement do not cover information that is in
11 the public domain or becomes part of the public domain through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
14 or produced by another party or by a non-party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
16 the categories of persons and under the conditions described in this agreement. Confidential
17 material must be stored and maintained by a receiving party at a location and in a secure manner
18 that ensures that access is limited to the persons authorized under this agreement.

19 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
20 ordered by the Court or permitted in writing by the designating party, a receiving party may
21 disclose any confidential material only to:

22 (a) the receiving party’s counsel of record in this action, as well as employees
23 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

24 (b) the officers, directors, and employees (including in-house counsel) of the
25 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
26

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for
4 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
5 A);

6 (d) the Court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the duplication of
8 confidential material, provided that counsel for the party retaining the copy or imaging service
9 instructs the service not to disclose any confidential material to third parties and to immediately
10 return all originals and copies of any confidential material;

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
13 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
15 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
16 under this agreement;

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or discussing or
20 referencing such material in court filings, the filing party shall confer with the designating party,
21 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
22 remove the confidential designation, whether the document can be redacted, or whether a motion
23 to seal or stipulation and proposed order is warranted. During the meet-and-confer process, the
24 designating party must identify the basis for sealing the specific confidential information at issue,
25 and the filing party shall include this basis in its motion to seal, along with any objection to
26 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be

1 followed and the standards that will be applied when a party seeks permission from the Court to
2 file material under seal. A party who seeks to maintain the confidentiality of its information must
3 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
4 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
5 in accordance with the strong presumption of public access to the Court's files.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
8 or non-party that designates information or items for protection under this agreement must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. The designating party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify, so that other portions of the
12 material, documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
16 unnecessarily encumber or delay the case development process or to impose unnecessary
17 expenses and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it designated
19 for protection do not qualify for protection, the designating party must promptly notify all other
20 parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
23 ordered, disclosure or discovery material that qualifies for protection under this agreement must
24 be clearly so designated before or when the material is disclosed or produced.

25 (a) Information in documentary form: (*e.g.*, paper or electronic documents
26 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial

proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within 15 days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding
5 confidential designations or for a protective order must include a certification, in the motion or in
6 a declaration or affidavit, that the movant has engaged in a good faith meet-and-confer
7 conference with other affected parties in an effort to resolve the dispute without court action. The
8 certification must list the date, manner, and participants to the conference. A good faith effort to
9 confer requires a face-to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the designating party may file and serve a motion to retain confidentiality under
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). If the
13 designating party does not file a motion to retain confidentiality within 14 days following the
14 conclusion of the parties' conference regarding the designation, the designation shall be deemed
15 withdrawn. The burden of persuasion in any such motion shall be on the designating party.
16 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
17 unnecessary expenses and burdens on other parties) may expose the challenging party to
18 sanctions. All parties shall continue to maintain the material in question as confidential until the
19 Court rules on the challenge.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
24 party must:

25 (a) promptly notify the designating party in writing and include a copy of the
26 subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this agreement. Such notification shall include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued
5 by the designating party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
8 material to any person or in any circumstance not authorized under this agreement, the receiving
9 party must immediately: (a) notify in writing the designating party of the unauthorized
10 disclosures; (b) use its best efforts to retrieve all unauthorized copies of the protected material;
11 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
12 this agreement; and (d) request that such person or persons execute the "Acknowledgment and
13 Agreement to Be Bound" (Exhibit A).

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order or agreement that provides for production without prior privilege review. The parties
21 agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth
22 herein.

23 10. NON-TERMINATION AND RETURN OF DOCUMENTS

24 Within 60 days after the termination of this action, including all appeals, each receiving
25 party shall make reasonable efforts to return all confidential material to the producing party,
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including all copies, extracts, and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

STIPULATED TO, DATED AND RESPECTFULLY SUBMITTED this 17th day of June, 2019.

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GROUP PLLC

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Federal Rule of Evidence 502(d), the
3 production of any documents in this proceeding shall not, for the purposes of this proceeding or
4 any other federal or state proceeding, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED this 25th day of June 2019.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on
7 _____ in the case of *Lowry v. Additech, Inc.*, Case No. C19-0241-JCC (W.D.
8 Wash. 2019). I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
11 in any manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____